

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

DAVID WARRENDER

Claimant

V.

VIA CHRISTI HOSPITALS WICHITA

Respondent

AND

**SECURITY INS. CO. OF HARTFORD and
FIRE & CASUALTY CO. OF CONNECTICUT**

Insurance Carrier

Docket No. 256,136

ORDER

Respondent and its insurance carrier (respondent) appealed the May 1, 2015, Post Award Medical Order entered by Administrative Law Judge (ALJ) Gary K. Jones. Jonathan Voegeli of Wichita, Kansas, appeared for claimant. Joseph C. McMillan of Overland Park, Kansas, appeared for respondent. The Board placed this appeal on its summary docket for disposition without oral argument.

RECORD

The record considered by the Board consists of the March 31, 2010, Settlement Hearing transcript and attachments thereto except the reports of Drs. Sandra Barrett and Diana K. Ketterman; the April 29, 2015, Post Award Hearing transcript and exhibits thereto; and the pleadings contained in the administrative file.

ISSUES

On March 31, 2010, claimant settled his claim for a July 8, 1999, accidental work injury. The parties agreed claimant was permanently and totally disabled and was paid \$125,000, including \$101,490.36 in temporary total disability benefits. Respondent also agreed to pay claimant's medical expenses of \$420,569.44 and the parties agreed, "medical only is left open to the claimant with Dr. [Diana K.] Ketterman remaining the authorized doctor for all treatment, tests and referrals except referrals to rehab hospitals or until further order of the Court."¹

¹ S.H. Trans. at 3.

Respondent filed an application to modify claimant's post-award medical treatment to change claimant's authorized medical provider from Dr. Kettermann to Dr. Aly Gadalla. Respondent asserts Dr. Kettermann treats claimant with excessive narcotic medications, which endangers his health and mortality and is not relieving the symptoms of his work-related injury.

Claimant does not want to change physicians because of his long-standing relationship with Dr. Kettermann.

The ALJ ruled:

K.S.A. 44-510k provides that an administrative law judge can make an award for post award medical treatment if it is found that the care is necessary to cure or relieve the effects of the accidental injury which are subject of the underlying award.

In this case, the Court finds that Dr. Kettermann should continue as the authorized treating physician. Pursuant to an agreement of the parties and a prior Court Order, Dr. Kettermann has been providing care to the Claimant for many years. Dr. Kettermann's care is satisfactory to the Claimant. Although other doctors have different opinions regarding what the Claimant's treatment should be, Dr. Kettermann is by far the most familiar with the Claimant, and the Court finds her opinion to be the most credible.²

The issue before the Board is: does claimant's medical treatment cure or relieve the effects of his accidental injury?

FINDINGS OF FACT

A post-award medical hearing was held on April 29, 2015, and claimant appeared pro se. No witnesses testified and the parties agreed medical records of Dr. Kettermann and reports of Drs. Gadalla, Shawn Smith and Jeanette Salone³ would be admitted into evidence without testifying.

In an April 28, 2015, letter, Dr. Kettermann stated she began treating claimant in 2004 and since January 2014, respondent attempted to change claimant's medications. The doctor indicated there was a concern about the side effects of claimant's medications and believed cost was a factor. Dr. Kettermann noted claimant has been on the same medications since 2004 and has bilateral reflex sympathetic dystrophy in his lower extremities that will be present the rest of his life.

² ALJ Post Award Medical Order at 2.

³ The reports of Drs. Gadalla, Smith and Salone were included in Respondent's Exhibit 1. In the future, the parties are requested to make each medical report a separate exhibit.

At respondent's request, claimant was evaluated by Dr. Salone on January 23, 2013. The doctor was asked to evaluate claimant's current medical treatment, especially medication review, and address whether the medications were necessary. If the doctor felt she did not agree with claimant's current medication regime, she was to recommend changes. Dr. Salone indicated claimant had complex regional pain syndrome Type I, involving both lower extremities.

Dr. Salone reviewed claimant's medications and made recommendations concerning each. She indicated her biggest concern was that claimant probably had sleep apnea and should not be taking Diazepam, Seroquel and Zolpidem until he underwent a sleep study. Dr. Salone indicated claimant should continue taking some drugs prescribed by Dr. Ketterman, discontinue other drugs, including Kadian, a narcotic, and made recommendations concerning other medications. In order to be weaned off Kadian, Dr. Salone recommended chronic pain management, detoxification or alternative therapy along with cognitive behavioral therapy. The doctor also noted consideration should be given to transferring claimant's treatment to another provider, one medical provider would not be able to make the changes and claimant needed to be in an inpatient treatment program where he would stay overnight under the direction of a multidisciplinary program.

On July 29, 2014, at respondent's request, claimant was evaluated by Dr. Smith. The doctor's impressions were reflex sympathetic dystrophy of the right lower extremity with new diagnosis of bilateral lower extremity involvement without any recent imaging study, anxiety, depression and chronic pain syndrome while taking multiple narcotics. Dr. Smith indicated the best way to determine claimant's current diagnosis and clarify his pain management needs would be an inpatient hospitalization to perform diagnostic testing and functional restoration with physical therapy, psychological and psychiatric evaluation with the availability of narcotic detoxification support. Dr. Smith summarized:

Certainly Mr. Warrender has been treated for chronic pain for 15 years and one evaluation by myself will not dictate the perfect prescription for resolution of his symptoms. It is likely he will continue to experience some symptoms long-term no matter what medication he is on. I think the goal in this case would be to try to adjust medications so he has less side effects from medication, and have a safe prescription dosage that will lower his high risk of overdose and death. I would tie the dosage and number of medications given for pain to the amount of pain reduction and the amount of improvement in functional activity. Otherwise, Mr. Warrender may be simply saturating his pain receptors with too much narcotic which is theorized to result in increasing pain not pain relief.⁴

⁴ P.A.H. Trans., Resp. Ex. 1.

Claimant was also evaluated, at respondent's request, by Dr. Gadalla.⁵ The doctor had several impressions, including chronic pain syndrome with use of multiple narcotics without adequate pain relief, narcotic dependence and poly-pharmacy, uncontrolled anxiety and depression and questionable bilateral lower extremity reflex sympathetic dystrophy. Dr. Gadalla recommended reducing claimant's medication gradually in an outpatient setting, rather than an inpatient comprehensive rehabilitation program and that he would benefit from a psychiatric evaluation and an addiction specialist to review any underlying psychological disorders that might hinder narcotics weaning.

Dr. Gadalla explained to claimant and his wife that over time, claimant developed a tolerance to his medications and the pain may worsen with taking high doses. The doctor indicated that taking too much narcotic medication may result in increased pain, not pain relief. He noted claimant and his wife expressed a desire to pursue decreasing narcotic medication to avoid respiratory compromise and death from long-term narcotic use.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 1999 Supp. 44-510(a) reads:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

The parties proceeded in this case under the procedure allowed in K.S.A. 44-510k, enacted in 2000, which states after an award is entered, the judge can award further medical care if it is "necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award."

Respondent asserts Dr. Ketterman's treatment is not necessary to cure or relieve the effects of claimant's accidental injury and requests Dr. Gadalla provide claimant's medical treatment. In *Hornseth*,⁶ following Mr. Hornseth's accident, his family physician, Dr. Woodall, continued providing medical treatment and recommended medications and physical therapy. At the suggestion of his counsel, claimant saw Dr. Harris, who recommended Mr.

⁵ Dr. Gadalla's report does not state when he evaluated claimant, but does indicate he reviewed Dr. Smith's July 29, 2014, report.

⁶ *Hornseth v. Saline County*, No. 110,635, 2014 WL 3630535 (Kansas Court of Appeals unpublished opinion filed July 18, 2014).

Hornseth continue with conservative pain management and indicated he would be willing to treat Mr. Hornseth. Mr. Hornseth applied for post-award medical treatment with Dr. Harris, asserting Dr. Woodall only wanted to prescribe muscle relaxants and a narcotic, which Mr. Hornseth did not think helped him. Saline County, Mr. Hornseth's employer, did not dispute claimant's entitlement to additional medical care, but wanted Dr. Woodall to be the authorized treating physician.

The ALJ issued a post-award medical award finding Mr. Hornseth failed to sustain his burden of proving the services of Dr. Woodall were objectively unsatisfactory. The Board affirmed, as did the Kansas Court of Appeals. The Board found K.S.A. 2010 Supp. 44-510k only required Saline County to provide medical treatment necessary to cure or relieve claimant of the effects of his accidental injury. The Kansas Court of Appeals noted the Board found insufficient evidence in the record that Dr. Woodall's medical treatment was not relieving the effects of Mr. Hornseth's accidental injury. The Kansas Court of Appeals stated:

Hornseth also contends that it is the responsibility of the ALJ or the Board to select a post-award health care provider. In rejecting Hornseth's argument, the Board concluded that "K.S.A. 2010 Supp. 44-510k and Supp. 44-510h only require [the County to] provide medical treatment that is necessary to cure or relieve claimant of the effects of his accidental injury. Moreover, if [Hornseth's] legal analysis were adopted, the fact finder in every post-award medical proceeding would be placed in the position of determining what treatment was 'best' for claimant." Based on the plain language of K.S.A. 2010 Supp. 44-5[1]0k as well as the plain language of K.S.A. 2010 Supp. 44-510h, we agree with the Board's conclusion.

As in *Hornseth*, a party in this case, respondent, is dissatisfied with how the authorized treating physician, Dr. Kettermann, is treating claimant and requested the ALJ authorize a different treating physician. Under the facts of this claim, as in *Hornseth*, neither the ALJ, nor the Board, should determine what course of treatment is best for claimant, that recommended by Dr. Kettermann or Dr. Gadalla. Rather, the issue for the Board is whether the treatment provided by Dr. Kettermann is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.

There is a difference of opinion among the physicians on the best way to treat claimant, including the dosages and types of medications he should be prescribed. Drs. Gadalla, Smith and Salone, all hired by respondent, expressed concern that claimant is being overmedicated to the extent it is dangerous to his health. The three doctors felt some of claimant's dosages should be reduced and others discontinued. Respondent argues excess dosages of medications and unnecessary medications do not cure or relieve the effects of claimant's accidental injury. On the other hand, none of the aforementioned physicians specifically opined Dr. Kettermann's course of treatment was not necessary to cure or relieve the effects of claimant's accidental work injury. Dr. Smith summed it up best when he indicated one evaluation will not produce a perfect prescription for the resolution of claimant's symptoms.

Dr. Kettermann has treated claimant since 2004, and according to her, claimant's medications have not changed since then. At the settlement hearing, respondent agreed Dr. Kettermann would be claimant's authorized treating physician. Claimant indicated he wants to continue treating with Dr. Kettermann. There is insufficient evidence that Dr. Kettermann's course of treatment is not necessary to cure or relieve the effects of claimant's accidental work injury. Stated another way, the Board concurs with the ALJ's finding that claimant's current medical treatment is necessary to cure or relieve the effects of his accidental injury.

CONCLUSION

Respondent failed to prove claimant's current medical treatment is not necessary to cure or relieve the effects of his accidental injury.

WHEREFORE, the Board affirms the May 1, 2015, Post Award Medical Order entered by ALJ Jones.

IT IS SO ORDERED.

Dated this ____ day of July, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Gary K. Jones, Administrative Law Judge